

§ 821.26

49 CFR Ch. VIII (10–1–01 Edition)

§ 821.26 Motion to dismiss petition for review for lack of standing.

Upon motion by the Administrator within the time limitation for filing an answer, a petition for review shall be dismissed for lack of standing in either of the following instances:

(a) If the petitioner's certificate at the time of the denial or renewal thereof was under an order of suspension; or

(b) If the petitioner's certificate had been revoked within one year of the date of the denial or renewal thereof, unless the order revoking such certificate provided otherwise.

Subpart D—Special Rules Applicable to Proceedings Under 49 U.S.C. 44709

§ 821.30 Initiation of proceedings.

(a) *Appeal.* A certificate holder may file with the Board an appeal from an order of the Administrator amending, modifying, suspending, or revoking a certificate. The appeal shall be filed with the Board within 20 days from the time of service of the order and be accompanied with proof of service on the Administrator.

(b) *Contents.* Each appeal shall contain a concise but complete statement of the facts relied on and the relief sought. It shall identify the Administrator's order and any certificate affected and shall recite the Administrator's action from which the appeal is sought. It shall also contain proof of service on the Administrator.

(c) *Effect of timely appeal with the Board.* Timely filing with the Board of an appeal from an order of the Administrator shall postpone the effective date of the order until final disposition of the appeal by the law judge or the Board, except in emergency proceedings.

[58 FR 11381, Feb. 25, 1993, as amended at 59 FR 59048, Nov. 15, 1994]

§ 821.31 Complaint procedure.

(a) *Filing, time of filing, and service on respondent.* The order of the Administrator from which an appeal has been taken shall serve as the complaint. The complaint shall be filed by the Administrator with the Board within 10 days

after the service date of the notice of appeal.

(b) *Contents of complaint.* If the Administrator claims that respondent lacks qualification as an airman, the order filed as the complaint, or an accompanying statement shall recite on which of the facts pleaded this contention is based.

(c) *Answer to complaint.* The respondent shall file an answer to the complaint within 20 days of service of the complaint upon him or her by the Administrator. Failure to deny the truth of any allegation or allegations in the complaint may be deemed an admission of the truth of the allegation or allegations not answered. Respondent's answer shall also include any affirmative defense that respondent intends to raise at the hearing. A respondent may amend his or her answer to include any affirmative defense in accordance with the requirements of § 821.12(a). In the discretion of the law judge, any affirmative defense not so pleaded may be deemed waived.

[40 FR 30243, July 17, 1975, as amended at 49 FR 28250, July 11, 1984, 59 FR 59048, Nov. 15, 1994]

§ 821.32 Burden of proof.

In proceedings under 49 U.S.C. 44709, the burden of proof shall be upon the Administrator.

[40 FR 30243, July 17, 1975, as amended at 65 FR 42639, July 11, 2000]

§ 821.33 Motion to dismiss stale complaint.

Where the complaint states allegations of offenses which occurred more than 6 months prior to the Administrator's advising respondent as to reasons for proposed action under 49 U.S.C. 44709, respondent may move to dismiss such allegations pursuant to the following provisions:

(a) In those cases where a complaint does not allege lack of qualification of the certificate holder:

(1) The Administrator shall be required to show by answer filed within 15 days of service of the motion that good cause existed for the delay, or that the imposition of a sanction is warranted in the public interest, notwithstanding the delay or the reasons therefor.